under the agreement. In this connection it is significant that the first clear refusal by the defendant was contained in her letter of 14th October, 1966 to which I have made reference earlier in my judgment. That letter, however, was not in evidence at the trial, although it has been included in the appeal record. Assuming that we are not entitled to look at it, we have to fall back on the plaintiff's letter of 8th November, 1966 which he sent to the defendant care of another person. As there is no evidence that that letter reached the defendant, the position would therefore appear to be that there never was any refusal by the defendant to carry out her obligations under the contract. In the circumstances, it may be argued that this action was premature, but that was not the stand taken by the defendant. In any event, service of the writ on the defendant constituted notice of the appellant's intention to stand on his legal right under the agreement (see *Tool Metal Co.* v. *Tungsten Electric Co.*[12]), and there was no threat to infringe that right until the defence was filed. Whatever view I take of the case, it would seem clear that time did not begin to run against the plaintiff until shortly before the action was filed. It was therefore not barred by limitation.

I would allow the appeal with costs here and in the court below, set aside the order made by the court below and make an order that the defendant do execute a valid and registrable transfer in terms of the plaintiff's claim within 14 days from today, and that in the event of her refusal or failure to execute such transfer within that period the Registrar of the High Court at Ipoh do execute a transfer on her behalf.

Ong C.J.: I agree with the judgment just delivered by Gill F.J., to which there is nothing I can usefully add. The order of this court will be in terms as proposed by him.

Ali F.J. concurred.

Appeal allowed.

Solicitors: *Mahendran & Co.; Rajendra & Teik Ee.*

LEONG CHEE KUM & ANOR. v. NG AH LAU

[A.C.J. (Chang Min Tat J.) August 24, 1970]

[Ipoh — Civil Appeal No. 5 of 1970]

Landlord and Tenant — Claim for possession on the ground that premises have been used for an illegal purpose — Conviction of tenant's wife for using premises as a common gaming house — Validity of notice to quit — Control of Rent Act, 1966, s. 16(1)(d).

This was an appeal by the landlord against the decision of the learned magistrate in dismissing his action for possession of premises. The application had been made under section 16(1)(d) of the Control of Rent Act, 1966, on the ground that the tenant's wife had used the premises for an illegal purpose, *viz.* for a common gaming house. For proof of such user, reliance was made on the conviction of the tenant's wife for the offence of using the premises as a common gaming house. Written notice of termination of the tenancy had been given and served on the tenant's wife.

Held, allowing the appeal: (1) the notice to quit in this case had clearly been brought to the notice of the tenant and for the proper period;

(2) in this case the conviction of the tenant's wife on her plea of guilty had been rightly admitted and there was therefore evidence in this case that the wife of the tenant had assisted in carrying on a public lottery in the demised premises.

Cases referred to:-

(1) *Champion Motors (M) Ltd.* v. *Leong Siew Kwan* [1968] 2 M.L.J. 31.

(2) *Loh Chik San* v. *Loh Chak Wan* [1961] M.L.J. 255.

(3) *Lim Kien Mok* v. *B.H. Kevan* [1963] M.L.J. 284.

(4) *Doe d. Cox & Ors.* (1802) 4 Esp. 185; 170 E.R. 685.

(5) *Loh Peck Hoo* v. *Yip Lim* [1967] 1 M.L.J. 112.

(6) *Tay Chwee Cheng* v. *Singapore Sing Hua Poey Chin Association* [1968] 1 M.L.J. 176.

(7) *She Eng Gek* v. *D.A. de Silva* [1957] M.L.J. 55.

MAGISTRATE'S CIVIL APPEAL.

F. C. Arulanandom for the appellants.

S. A. Lingam for the respondent.

Cur. Adv. Vult.

Chang Min Tat J.: This is an appeal by a disappointed landlord against the decision of the learned magistrate in Ipoh in dismissing his action for possession of premises. His application was made under section 16(1)(d) of the Control of Rent Act, 1966 that the tenant's wife had used the premises for an illegal purpose, *viz.* for a common gaming house. For proof of such user, reliance was made by the landlord to the appearance of the tenant's wife in the criminal magistrate's court at Ipoh, her plea of guilty and her conviction and sentence. Written notice of termination of the tenancy was given and served on the tenant's wife. The tenant continued to hold over.

The tenant claimed to have been in occupation since 1956, and save that he admitted to being the proprietor of the defendant firm in whose name the tenancy was taken and that the person convicted of the said criminal offence was his wife, averred that he had no knowledge and did not admit that his wife had committed the offence or been convicted. There was strangely a denial of receipt of the notice to quit but it was followed by an admission of replying thereto. It was then contended that the said notice was ineffective and invalid. The tenant claimed the protection of the Control of Rent Act, 1966 and further contended that the statement of claim disclosed no cause of action.

At the trial, so far as the record shows, no objection was taken to the validity of the notice of termination. All that learned counsel for the tenant contended was that the notice to quit must be served on the tenant, presumably personally and since that was not done, the tenancy had not been duly terminated as required by section 16(5) of the Control of Rent Act, 1966. Reliance was had on two cases: *Champion Motors (M) Ltd.* v. *Leong Siew Kwan*[1] and *Loh Chik San* v. *Loh Chak Wan.*[2]

The learned magistrate in his grounds of judgment did not agree with this contention. Surely, learned counsel could not be right in his submission or in his reliance on the two cases cited by him. In the *Cham-*

pion Motors' case, the tenant had vacated the premises some nine years previously. The notice to quit was served on some unknown person and there was no evidence that the notice was in fact brought to his notice. In the circumstances it was held that mere proof of posting by registered post was insufficient to establish that the tenancy had been lawfully terminated. In *Loh Chik San's* case, the tenant was similarly not in occupation and the registered notice to quit that was attempted to be served on him was returned with the indorsement "Gone away." Ismail Khan J. (as he then was) also held that there had been no valid determination of the tenancy since the presumption of service was rebutted by the indorsement. On due examination, it is reasonably clear that neither of these cases could support the contention of learned counsel for the tenant.

The law on service is, I think, reasonably clear, as can be seen in the following passage from *Halsbury's* Laws of England (3rd Edn.) Vol. 23 on page 526:

> 1179. *Service on tenant.* The notice to quit need not be served personally upon the tenant. It may be served upon his agent..... Apart from any question of agency, the fact that the notice has been delivered to the wife or servant of the tenant raises a strong presumption that it has reached him, especially if an explanation of the notice was given when it was delivered and the presumption can only be rebutted by proof that the notice did not come to the knowledge of the tenant at all.

This statement of the law was applied in the Singapore case of *Lim Kien Mok* v. *B. H. Kevan*[3] with which I respectfully agree.

Now the facts in this case were that after service of the written notice dated 3rd December, 1968 to quit on the expiry of one month after service the tenant through his solicitor on 19th December, 1968 acknowledged receipt of the notice and notified that he would decline to quit as requested. On these facts I do not conceive it possible to claim that the notice had not been brought to the notice of the tenant and for the required period of notice. Learned counsel for the respondent tenant did not persist with this objection to the notice to quit.

I am satisfied that the learned magistrate was correct in holding that the notice to quit was duly brought to the notice of the landlord and for the proper period, despite the vehement sworn evidence of both the defendant proprietor and his wife which in the light of the correspondence referred to must be regarded as false to their affirmations to tell the truth.

What bothered the learned magistrate however with regard to the notice was that the notice referred to the premises No. 17, Pike Street, Menglembu whereas in fact the tenant occupied only a half of the front portion. He noted with some distress that the landlord had made no application to amend. I do not myself think that the magistrate had any real cause for concern. In the first place, the defendant had not chosen to raise any issue of this misdescription and in the second, misdescription does not in law render the notice invalid, if the tenant is not misled by it. In *Doe d. Cox & Ors.*,[4] the notice specified "The Waterman's Arms" instead of "The Bricklayer's Arms," but since there was only one house held by the tenant under the landlord, it was held that the tenant was not misled and the notice was good. The respondent to this appeal did not at any time claim to have been misled.

Next, the learned magistrate accepted the submission of the then counsel for the landlord on the authority of *Loh Peck Hoo* v. *Yip Lim*[5] that proof of illegal user must be proof beyond reasonable doubt and on the authority of this case and another, *Tay Chwee Cheng* v. *Singapore Sing Hua Poey Chin Association*[6] on which learned counsel for the tenant relied, he held that the landlord had not proved his case. With all respect, it does not appear to me that either of these two cases laid down any principle of law. In *Loh Peck Hoo's* case, Choor Singh J. held that the evidence of 3 police officers of people going in and coming out of the premises was not sufficient to establish that the premises was used as a brothel, *i.e.* for illegal or immoral purposes, within the meaning of section 15(1)(d) of the Singapore Control of Rent Ordinance (Cap. 242) which is in *pari materia* with section 16(1)(d) of our Control of Rent Act, 1966. In *Tay Chwee Cheng's* case, Ambrose J. held that though some members of the association in whose name the tenancy was taken had been found guilty of gaming in a common gaming house, on the evidence of the president of the association that he had not permitted the user and that no prosecution was ever taken against either himself or the association for the offence, he was not satisfied that the defendant had been guilty of using or permitting the use of the premises as a common gaming house. It is pertinent to note that in this case the association was alleged to have used or permitted the use of the premises as a common gaming house. Both cases therefore appear to have been decided on whether on the facts before the court, there had been proof of such illegal or immoral user as would entitle the landlord to re-possession.

In the case under appeal, the landlord claimed for re-possession not on the ground that the tenant had been guilty of using or of permitting the use of the premises as a common gaming house but on the ground that the wife of the proprietor of the defendant firm had assisted in carrying on a public lottery in the demised premises for which offence she had been convicted and fined.

In reply to this claim, the tenant alleged, *inter alia*, that no cause of action was disclosed in the statement of claim in that there was never at any time any allegation that the wife of the tenant who was convicted was a person residing or lodging with the tenant, to bring the claim fully and squarely within section 16(1)(d) of the Control of Rent Act, 1966. No authority to sustain this submission was cited to the learned magistrate or to me. The learned magistrate would appear to have overruled this submission. Though he made no reference to it in his grounds of judgment, he referred to the landlord's claim but held not that there was no cause of action but that the landlord had not proved his claim. For myself, I do not find myself attracted to it. The tenant held the premises of the landlord. The offence by his wife was committed on the premises. Could it not therefore be taken on these facts that the wife resided or lodged with the

tenant, who was after all her husband in the demised premises?

On the evidence, however, the tenant contended that no proof was adduced that the offence or illegality complained of was committed in the demised premises, and therefore the landlord had not made out his case. Now section 16(1)(d) of the Control of Rent Act, 1966 enacts that no order for the recovery of possession of any controlled premises or any part thereof comprised in a tenancy shall be made or given except

(d) where the tenant or any person residing or lodging with him.... has been guilty..... of using or permitting the use of the controlled premises for illegal or immoral purposes.....

In bringing his claim within the scope of section 16(1)(d), the landlord relied on the proof of the conviction of the tenant's wife on a charge of assisting in carrying on a public lottery at the premises No. 17, Pike Street, Menglembu. It was true that the charge did not specify that the lottery was carried on in that part of the controlled premises which was let to the tenant, but the incidence of letting covenanted for quiet possession only of that part let and it seems to me that if the tenant contended that he or any person residing with him had any right to any other part of the premises and that the offence was committed in that other part and not in the demised part, then it was for him to raise this issue on the pleadings and for him to establish it on a balance of probabilities, by way of answer to the landlord's claim.

At the appeal, learned counsel made a further point which he did not raise in the court below, but of course inadmissible evidence does not become admissible merely because of the failure of counsel to object to it when it was sought to be admitted. He now says, relying on *She Eng Gek* v. *D. A. de Silva*,[7] the conviction was wrongly admitted. It is however undeniable that the tenant's wife had pleaded guilty to the charge and the judgment of Buhagiar J. is clearly against rather than for the contention of counsel. Buhagiar J. held in that case that whereas the conviction in the criminal proceedings was no evidence in civil proceedings, the plea of guilty being an admission was admissible.

The appeal is therefore allowed. There will be no order for costs here or in the court below, see section 16(6) Control of Rent Act, 1966. The tenant will deliver up possession of the premises on or before 31st December 1970.

Appeal allowed.

Solicitors: *Arulanandom & Co.; S. A. Lingam.*

LIM YOON FAH v. PUBLIC PROSECUTOR

[A.Cr.J. (Chang Min Tat J.) September 4, 1970]

[Perak — Criminal Appeal No. 31 of 1970]

Criminal Law and Procedure — Trial — Sentence — Public interest — Public interest best served if offender induced to turn from criminal ways to honest living.

Penal Code, ss. 392 & 397 — Armed robbery — Sentence — Public interest.

The appellant had pleaded guilty to the offence of robbery under sections 392 and 397 of the Penal Code. The appellant was 20 years 7 months old at the time of the offence and a probation report had been called for. The probation officer reported that the appellant had obviously been misled by his companion in crime. The appellant came from a good family and was training successfully as a motor mechanic. The learned president of the sessions court sentenced him to 30 months imprisonment and 4 strokes of the rattan.

Held, allowing the appeal: in this case the public interest would be best served by helping the offender to turn from criminal ways to honest living and as there was a probability that the appellant would turn a new leaf, if given a chance: the appellant will be put on bond under section 294 of the Criminal Procedure Code (Cap. 6) for 3 years, in the sum of $1,000 in one surety.

Cases referred to:-

(1) *R.* v. *Ball* (1951) 35 Cr. App. R. 164.

(2) *Ho Kim Luan & Anor.* v. *Public Prosecutor* [1959] M.L.J. 159.

MAGISTRATE'S CRIMINAL APPEAL.

F. Arulanandom for the appellant.

Haidar bin Mohamed Noor (Deputy Public Prosecutor) for the respondent.

Chang Min Tat J.: The appellant who had in the first place consented to be tried in the sessions court for an offence punishable under sections 392 and 397 of the Penal Code and then pleaded guilty to the charge without defending himself was sentenced to 30 months' imprisonment and 4 strokes of the rattan. He now appeals against the sentence.

The learned president before assessing the appropriate sentence to meet the circumstances of this case and the nature of the offence, on being told that the appellant was 20 years 7 months old at the time of the offence, called for a probation report. In so doing, the learned president was acting, if I may say so, very correctly but beyond noting his age and that the accused was a first offender, he regrettably did not proceed to consider the other contents of the report. They show quite clearly that the accused came from a decent family, with parents who were genuinely interested in his welfare and the welfare of his other brothers and sisters. The report also discloses that the accused had a certain dexterity with his hands and was training satisfactorily as a motor-car mechanic. From his investigations, the probation officer reported that the appellant was obviously misled by his companion in crime.

The facts constituting the offence also disclosed that though the accused and his companion were both armed with knives and they did threaten the complainant with harm unless more money than the $14 with which the accused was charged was produced, no attempt was ever made or would appear to be contemplated to make use of the knives or to inflict harm to the persons of the complainant and his family. Admittedly there was the opportunity to do so but the point is that on the facts as disclosed and as admitted no move in this direction was made.

The learned president stressed the public interest in coming to his decision on sentence and was of the opinion that armed robberies should be discouraged by